



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 16, 1998

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By Hand Delivery and First Class Mail

Magalie R. Salas, Secretary
Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

RECEIVED

MAR 16 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: CC Docket No. 96-45
AAD/USB File No. 98-36
In the Matter of the Federal-State Joint Board on Universal Service
Comments of the Pennsylvania Public Utility Commission
On Reconsideration Petition of the Pennsylvania Public Utility Commission
to The FCC's Memorandum Opinion and Order of January 2, 1998

Dear Ms. Salas:

I am filing these Reply Comments on behalf of the Pennsylvania Public Utility Commission in support of the Petition for Reconsideration filed by the PaPUC (PaPUC Reconsideration Petition) on February 2, 1998 to the Common Carrier Bureau's (CCB) Memorandum Opinion and Order of January 2, 1998. These Reply Comments incorporate the PaPUC's prior Reconsideration Petition as well as the adjustments to the original PaPUC supporting documentation that had been filed with the CCB as Comments pursuant to the CCB's request.

Sincerely,

Joseph K. Witmer,
Assistant Counsel
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Certificate of Service

I, Joseph K. Witmer, hereby certify that I have on this 16th Day of March, 1998, served a true and correct copy of the Reply Comments of the Pennsylvania Public Utility Commission of the Common Carrier Bureau's Memorandum Opinion and Order of January 2, 1998, in CC Docket No. 96-45, AAD/USB File No. 98-36, upon the persons and in the manner indicated below.

Via Hand Delivery

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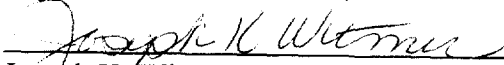
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CC Docket No. 96-45
AAD/USB File No. 98-36
PaPUC Reconsideration Petition
Reply Comments of the PaPUC
March 16, 1998

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)
Federal-State Joint Board on)
Universal Service)

CC Docket No. 96-45
AAD/USB File No. 98-36

**REPLY COMMENTS OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
IN SUPPORT OF THE COMBINED PETITION FOR RECONSIDERATION OF
THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

I. INTRODUCTION

Pursuant to FCC Public Notice DA 98-293 released on February 13, 1998, the Pennsylvania Public Utility Commission (PaPUC) submits these Reply Comments in support of the Combined Petition for Reconsideration of the Pennsylvania Public Utility Commission (PaPUC Reconsideration Petition). The PaPUC previously filed adjustments to the PaPUC Reconsideration's Appendix C, Appendix C-1, Appendix D, and Appendix D-1 (Original Appendices) as a Comment. This Reply Comment incorporates these other Pennsylvania pleadings, and any comments and reply comments filed in support of the PaPUC

Reconsideration Petition, to the extent they are consistent with the original PaPUC Reconsideration Petition and this Reply Comment.

II . THE PENNSYLVANIA POSITION

1. The PaPUC originally filed the PaPUC Reconsideration Petition on February 2, 1998 with several appendices (Original Appendices) supporting the PaPUC position. The PaPUC subsequently filed a Comment which finalized the appendices attached to the PaPUC Reconsideration Petition (PaPUC Comment). The PaPUC hereby files this Reply Comment in further support of the PaPUC Reconsideration Petition and the PaPUC Comment by incorporating the claims and data set forth therein to the extent they are consistent with this Reply Comment. The PaPUC reiterates its concern about the impacts to Pennsylvania caused by the denial of the PaPUC's request for a waiver of the definition of a "rural area" for nine Pennsylvania counties. Pennsylvania is also concerned about the disproportionate impact of the FCC's decision on states east of the Mississippi, and Texas, Louisiana and Missouri west of the Mississippi. based on the Corrected Appendix C. Corrected Appendix C-1, Corrected Appendix D-1, and now Appendix D-1-A (the Corrected Appendices) set forth in the PaPUC Comment.

2. With that in mind, the PaPUC supports the Comment of the Public Utility Commission of Ohio (PUCO Comment), as well as the comments submitted by the other states, that the disproportionate impacts demonstrated by the Original and Corrected Appendices constitute new and relevant evidence that is likely to affect the implementation of Sections 254(b) and 254(h) of the TA-96.¹

3. The Original Appendices demonstrated that that 177 of 229 counties eligible for a waiver under the PaPUC Combined Petition are located east of the Mississippi. The Original Appendices also show that 24 of the remaining 52 counties are concentrated in 3 states west of the Mississippi i.e., Texas, Louisiana and Missouri. The PUCO's Comment about the disproportionate impact on states east of the Mississippi has been further refined in the Corrected Appendices. Those Corrected Appendices demonstrate that 235 of 325 counties that could be eligible for a waiver from the FCC's definition are located east of the Mississippi River and that 46 of the remaining 90 counties west of the Mississippi River are concentrated in Texas, Louisiana, and Missouri.

¹See 47 C.F.R. §1.106; W.S. Butterfield Theatres, Inc. v. Federal Communications Commission, 99 App DC 71, 237 F.2d 552 (1956); Re Armond J. Rolle, 31 FCC2d 553 (1971).

4. The PaPUC agrees with the PUCO Comment that this disproportionate impact, which graphically demonstrates which states and regions of the country will suffer detriment if the PaPUC Reconsideration is denied, will result in the denial of benefits from the schools and libraries and rural health provisions of the TA-96. The PaPUC agrees with the PUCO Comment that this disproportionate impact is producing an unintended consequence that is inconsistent with the universal service goals of Section 254 of the TA-96. Moreover, the PaPUC also agrees with the PUCO Comment that this disproportionate impact can be corrected by granting Pennsylvania the waiver requested in the PaPUC Reconsideration Petition.

5. Moreover, the cost of including every one of the 229 counties in the Original Appendices or the 325 counties in the Corrected Appendices will not open a national floodgate. The Corrected Appendices show that including these 325 counties in the schools and libraries requires only \$121,514,575, or 4.9%, of the total \$2.5 billion budgeted for the schools and libraries program. Moreover, the Corrected Appendices also show that the cost of including these 325 counties in the rural health program requires only \$17,155,775, or 4.3%, of the \$400,000,000 budgeted for rural health. The PaPUC does not believe that this minor demand on the budgeted resources, given the disproportionate impact indicated by the Original and Corrected Appendices, constitutes a floodgate in demand.

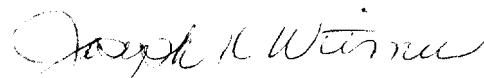
6. Finally, the PaPUC supports the PUCO Comment because it indicates the very real consequence of not adopting Pennsylvania's proposed four-part test. The PaPUC shares the concern in the PUCO Comment that areas of the country, such as Washington County in southeastern Ohio, are denied access to the additional schools and libraries discount, as well as the entire discount for rural health, based on the OMB-Goldsmith definition even though Washington County receives funds from the U.S. Department of Agriculture's Center for Rural Development.

7. The PaPUC does not believe that areas of the nation, such as Washington County and other states such as Indiana, Georgia, or North Carolina, should be deprived of the discounts intended for them based on a rigid and inflexible definition of what constitutes a "rural area." That is especially the case when, as in Washington County, the area is considered rural for other federal purposes under other federal programs.

8. For these reasons, the PaPUC urges the Commission to grant the Petition and use the non-binding waiver criteria set forth in the Petition to grant Pennsylvania the relief requested and to provide guidance to other states on what considerations would justify a waiver from the

OMB-Goldsmith definition. The PaPUC believes that the absence of detail on what constitutes "special circumstances" in the Pennsylvania Decision, the hardship and inequity imposed on counties east of the Mississippi River under a rigid and inflexible application of the OMB-Goldsmith definition, the impact on Texas, Louisiana, and Missouri west of the Mississippi River, the relatively minor 4% in budgeted program resources required to alleviate this disproportionate impact, and the spirit and intent of Congress justify a waiver from the OMB-Goldsmith definition for Butler, Carbon, Columbia, Fayette, Lebanon, Perry, Pike, Somerset, and Wyoming county. Finally, the PaPUC also asks the CCB to consider permitting carriers such as wireless carriers, cable companies, and electric utilities as carriers eligible to deliver the universal service support provided under the Act and the Commission's regulations.

Respectfully submitted,



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Reply Comments of the PaPUC
March 16, 1998

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